United Nations S/2010/265

Security Council

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Letter dated 28 May 2010 from the Secretary-General addressed to the President of the Security Council

I have the honour to convey the attached communication dated 27 May 2010 (see annex), which I have received from the Registrar of the International Criminal Court, Ms. Silvana Arbia, transmitting the Decision informing the United Nations Security Council about the lack of cooperation by the Republic of the Sudan, issued on 26 May 2010 by Pre-Trial Chamber 1 of the International Criminal Court.

I should be most grateful if you would bring the present letter and its attachment to the attention of the members of the Security Council.

(*Signed*) **BAN** Ki-moon

10-38545 (E) 080610

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Annex

Note verbale dated 27 May 2010 from the Registrar of the International Criminal Court addressed to the Secretary-General

The Registrar of the International Criminal Court presents her compliments to the Secretary-General of the United Nations and has the honour to transmit to the Secretary-General of the United Nations, for onward transmission to the Secretary-General, a copy of the Decision informing the United Nations Security Council about the lack of cooperation by the Republic of the Sudan issued on 26 May 2010 by Pre-Trial Chamber 1.

The present communication is made in compliance with the Court's above-mentioned Decision and in application of article 5(1)(b)(i) of the Relationship Agreement between the International Criminal Court and the United Nations.

Enclosure

ICC-02/05-01/07-57 26-05-2010 1/8 EO PT

Cour
Pénale
Internationale

International
Criminal
Court

Original: English

No.: ICC-02/05-01/07
Date: 25 May 2010

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Presiding Judge
Judge Sanji Mmasenono Monageng
Judge Cuno Tarfusser

SITUATION IN DARFUR, SUDAN
IN THE CASE OF

THE PROSECUTOR V. AHMAD MUHAMMAD HARUN ("AHMAD HARUN") AND ALI MUHAMMAD ALI ABD-AL-RAHMAN ("ALI KUSHAYB")

Public Document

Decision informing the United Nations Security Council about the lack of cooperation by the Republic of the Sudan

Decision to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor
Luis Moreno Ocampo, Prosecutor
Fatou Bensouda, Deputy Prosecutor

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar
Ms Silvana Arbia
Mr Didier Preira

Defence Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

PRE-TRIAL CHAMBER I ("Chamber") of the International Criminal Court ("Court");

BEING SEIZED of the "Prosecution request for a finding on the non-cooperation of the Government of the Sudan in the case of *The Prosecutor v Ahmad Harun and Ali Kushayb*, pursuant to Article 87 of the Rome Statute" ("Prosecution's Request") filed on 19 April 2010;[1]

NOTING Resolution 1593 (2005)[2] adopted by the United Nations Security Council ("Security Council"), acting under Chapter VII of the Charter of the United Nations, on 31 March 2005 and referring the situation in Darfur, Sudan since 1 July 2002 to the Prosecutor of the Court, in accordance with article 13 (b) of the Rome Statute ("Statute");

NOTING the application[3] filed by the Prosecutor on 27 February 2007 under article 58 (7) of the Statute, requesting that summonses to appear or, in the alternative, warrants of arrest against Ahmad Muhammad HARUN ("Ahmad Harun") and Ali Muhammad Ali ABD-AL-RAHMAN ("Ali Kushayb") be issued by the Chamber;

NOTING the warrant of arrest against Ahmad Harun[4] and the warrant of arrest against Ali Kushayb[5] issued by the Chamber pursuant to article 58 of the Statute on 27 April 2007;

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[1] ICC-02/05-01/07-48-Conf and Annexes A and B. See Public Redacted Version ICC-02/05-01/07-48-Red and Annexes A and B.
[2] S/RES/1593 (2005).
[3] ICC-02/05-55-US-Exp. See Public Redacted Version ICC-02/05-56.
[4] ICC-02/05-01/07-2.
[5] ICC-02/05-01/07-3.

NOTING the "Submission by the Registrar of the Memorandum of Service of the Warrants of Arrest"[6], dated 3 May 2007, by which the Registrar informed the Chamber that the Embassy of the Republic of the Sudan to The Netherlands ("Sudanese Embassy") had refused to accept any document from the Court as instructed by its Government;

NOTING the "Order for an update on the Execution of the Warrants of Arrest",[7] issued on 16 May 2007 by the Chamber;

NOTING the Registrar's report entitled "Rapport du Greffier sur l'exécution des mandats d'arrêt", dated 23 May 2007;[8]

NOTING the "Request to the Republic of the Sudan for the Arrest and Surrender of Ahmad Harun"[9] and the "Request to the Republic of the Sudan for the Arrest and Surrender of Ali Kushayb",[10] both filed by the Registrar on 4 June 2007,

NOTING the Registrar's report entitled "Rapport sur les notifications des demandes d'arrestation et de remise",[11] dated 21 June 2007, by which the Registrar informed the Chamber that the Counsellor at the Sudanese Embassy in The Hague had refused to accept the requests on 11 June 2007. The *Rapport* also informed that, on the same day, the Registrar had sent the requests both to the Permanent Mission of the Republic of the Sudan to the United Nations in New-York and the Sudanese Ministry of Justice in Khartoum, which had received them on 16 June 2007;

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[6] ICC-02/05-01/07-5-Conf. The Chamber, being aware of the confidential nature of this filing, does not consider the mention of this particular reference to be inconsistent with its current level of confidentiality.
[7] ICC-02/05-01/07-9-Conf.
[8] ICC-02/05-01/07-11-Conf.
[9] ICC-02/05-01/07-13.
[10] ICC-02/05-01/07-14.
[11] ICC-02/05-01/07-21-Conf. The Chamber, being aware of the confidential nature of this filing, does not consider the mention of this particular reference to be inconsistent with its current level of confidentiality.

NOTING the "Registrar's Report on the Execution of the Warrants of Arrest",[12] dated 18 March 2008, by which the Registrar informed the Chamber that: (a) on 23 October 2007, he had sent a *note verbale* to the Minister of State for Foreign Affairs of the Republic of the Sudan through the Sudanese Embassy in The Hague requesting information on the execution of the warrants of arrest and the Sudanese Embassy had sent the letter back to the Registrar after opening it; (b) on 26 October 2007, the Registrar had sent the same document by fax to the Sudanese Embassy in The Hague; and (c) on 25 February 2008, two officers of the Registry had gone to the Sudanese Embassy in The Hague to notify a *note verbale* by which the Registrar sought information on the measures taken by the Republic of the Sudan to execute the warrants of arrest and that the Counsellor at the Sudanese Embassy, whilst meeting the officers of the Registry, had refused to accept the documents indicating that, following his government's instructions, he could not accept documents from the Court;

NOTING the "Decision ordering the Registrar to submit observations in relation to the Prosecution's Request", issued on 3 May 2010[13] by the Chamber and the observations submitted by the Registrar in response on 10 May 2010;[14]

NOTING articles 12, 13 and 21, paragraph 1 (b) of the Statute, article 25 and chapter VII of the Charter of the United Nations adopted on 26 June 1945 and Resolution 1593 (2005) adopted on 31 March 2005 by the Security Council;

[12] ICC-02/05-01/07-35-Conf-Exp. The Chamber, being aware of the confidential ex parte nature of this filing, does not consider the mention of this particular reference to be inconsistent with its current level of confidentiality.
[13] ICC-02/05-01/07-52-Conf.
[14] ICC-02/05-01/07-53-US-Exp, and see for the confidential redacted version ICC-02/05-01/07-53-Conf-Red.

CONSIDERING that, in accordance with article 25 of the Charter of the United Nations, the "Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter" and that the Republic of the Sudan is a member of the United Nations since 12 November 1956;

CONSIDERING that paragraph 2 of the Security Council Resolution 1593 (2005) provides that "the Government of Sudan and all other parties to the conflict in Darfur shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor pursuant to this resolution";

CONSIDERING therefore that the obligation of the Republic of the Sudan to cooperate with the Court stems directly from the Charter of the United Nations and Resolution 1593 (2005) adopted by the Security Council on 31 March 2005;

CONSIDERING in addition that the Security Council has entrusted the Court with the task of investigating and prosecuting crimes within the jurisdiction of the Court in the situation in Darfur, Sudan;

CONSIDERING that, by virtue of Security Council Resolution 1593 (2005), when the Republic of the Sudan fails to cooperate with the Court, thereby preventing the Court from executing the task entrusted to it by the Security Council, the Court has the inherent power to inform the Security Council of such a failure;[19]

CONSIDERING indeed that the Court has to inform the Security Council of any lack of cooperation by the Republic of the Sudan in relation to the enforcement of

[19] See in this regard: International Criminal Tribunal for the Former Yugoslavia, the Prosecutor v. Tihomir Blaskic, Case N° IT-95-14, Appeal Judgement, 29 October 1997, para. 33.

warrants of arrest issued by the Chamber in relation to the situation in Darfur, Sudan, thereby providing the Security Council with the information which is necessary for it to take any action as deemed appropriate;

CONSIDERING that the Republic of the Sudan is not a State Party to the Statute and has not entered into an agreement or an arrangement with the Court;

CONSIDERING therefore that, since both the jurisdiction of the Court to investigate and prosecute crimes within the situation of Darfur, Sudan, and the obligation of the Republic of the Sudan to cooperate with the Court originate from the Security Council, the Security Council is vested with the power to address and take any action in respect of Sudan's failure to cooperate with the Court;

CONSIDERING that, after taking all possible measures to ensure the cooperation of the Republic of the Sudan, the Chamber concludes that the Republic of the Sudan is failing to comply with its cooperation obligations stemming from Resolution 1593 (2005) in relation to the enforcement of the warrants of arrest issued by the Chamber against Ahmad Harun and Ali Kushayb;

CONSIDERING that this is without prejudice to other decisions or actions that the Chamber may take in respect of other cases arising in the situation in Darfur, Sudan;[16]

CONSIDERING finally that, in accordance with article 5 of the Negotiated Relationship Agreement between the Court and the United Nations,[17] the exchange

[16] ICC-02/05-01/09
[17] ICC-ASP/3/Res.1, entered into force on 4 October 2004.

of information between the two organizations shall be done respectively through the Registrar of the Court and the Secretary General of the United Nations;

FOR THESE REASONS,

ORDERS the Registrar to transmit the present decision to the Security Council, through the Secretary General of the United Nations, in order for the Security Council to take any action it may deem appropriate;

Done in both English and French, the English version being authoritative.

Judge Sylvia Steiner
Presiding Judge

Judge Sanji Mmasenono Monageng **Judge Cuno Tarfusser**

Dated this 25th May 2010
At The Hague, The Netherlands

Cour Pénale Internationale
International Criminal Court

Name: Anne-Aurore BERTRAND
Certifies document
No. ICC-02/05-01/07-57
Title: Decision informing the UNSC
Dated 26.05.10 at The HAGUE